

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

FELIX ALVAREZ,

Petitioner,

V.

LISA HOLLINGSWORTH,

Respondent.

CASE NO. 4:11CV3170

MEMORANDUM AND ORDER

This matter is before the court on Petitioner Felix Alvarez’s (“Alvarez”) Notice of Appeal. (Filing No. [8](#).) On January 19, 2012, the court determined that Alvarez’s Notice of Appeal was untimely. (Filing No. [10](#).) However, upon further review, it is apparent that the only Respondent in this matter is Lisa Hollingsworth, the Warden of a federal prison in Leavenworth, Kansas, and an employee of the United States. (Filing No. [1](#).) As such, the time for filing a notice of appeal is “60 days after the judgment or order appealed from is entered.” [Fed. R. App. P. 4\(a\)\(1\)\(B\)](#).

Here, the court dismissed Alvarez's Petition for Writ of Habeas Corpus without prejudice on December 7, 2011. (Filing No. [7](#).) Alvarez filed a Notice of Appeal on January 12, 2012, 36 days after the court entered judgment in this matter. (Filing No. [8](#).) The Notice of Appeal is therefore timely filed.¹ However, Petitioner has not submitted an application to proceed in forma pauperis on appeal or paid the appellate filing fee. The court will provide Alvarez the opportunity to do so.

¹The court previously determined that Alvarez's Notice of Appeal was untimely and that he had not shown excusable neglect for his failure to file a timely notice of appeal. (Filing No. [12](#).) In accordance with this Memorandum and Order, the court's previous Memorandum and Order has been stricken. (Filing No. 13, text-only order.)

IT IS THEREFORE ORDERED that:

1. Petitioner's Notice of Appeal is deemed timely filed.
2. Petitioner shall have until April 11, 2012, in which to either pay the \$455.00 appellate filing fee or submit a motion for leave to proceed in forma pauperis on appeal;
3. The Clerk of the court shall send to Petitioner the Form AO240, Application to Proceed Without Prepayment of Fees and Affidavit. The Clerk of the court is also directed to request a trust account statement from Petitioner's institution; and
4. The Clerk of the court is directed to set a pro se case management deadline in this matter with the following text: April 11, 2012: Deadline to submit IFP on appeal or pay filing fee.

DATED this 12th day of March, 2012.

BY THE COURT:

s/Laurie Smith Camp
Chief United States District Judge

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